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EVIDENCE—ADMISSIBILITY OF PROOF OF ANOTHER CRIME.—*PEOPLE V. THAU* (1916) 219 N. Y. 39.—The defendant was indicted for assaulting the complainant by striking him with a bottle. The prosecution was permitted to introduce evidence of a previous act of vandalism by defendant, in entering complainant's shop two weeks before the assault, and destroying \$50 worth of garments by pouring ink upon them. *Held*, that such evidence was admissible, the identity and motive of the assaulting party being in issue.

The general rule may be thus stated: "It is improper in the trial of a defendant for a crime to prove that he has committed other crimes having no connection with the one under investigation." *Jones, Evidence*, Vol. I, p. 721. But facts and circumstances which tend to prove any of the essential elements or ingredients of the crime for which the defendant is on trial, are not to be rejected as evidence simply because they may prove, or tend to prove, the accused to have committed another and distinct crime. *Regina v. Briggs* (1839) 2 Mood. & R. 199. Evidence of another offense, if it tends to show the existence of a motive to commit the crime charged, is competent where there is an apparent connection between the imputed motive and such crime. *Commonwealth v. Robinson* (1888) 146 Mass. 571. The same rule applies in proving intent. *State v. Burns* (1886) 35 Kan. 387; in establishing identity, *Johnson v. Commonwealth* (1886) 115 Pa. 369; or in proving malice, *Walter v. People* (1865) 32 N. Y. 147. Where the crime charged is so connected with the other offense sought to be proved as to form part of an entire transaction, or where proving the former would tend to prove the latter, such evidence is admissible. *Wilson v. State* (1900) 55 S. W. Tex., 68; *State v. Vines* (1882) 34 La. Ann. 1979. The real test of admissibility is best stated by Parker, C. J., *dissenting*, in *People v. Molineux* (1901) 168 N. Y. 343, a case in which proof of another crime similar to that sought to be proved against the defendant in the instant case, was rejected: "Does the evidence of the other crime fairly aid in establishing the commission by defendant of the crime for which he is being tried?" Accordingly in the principal case the court modifies its position from that of the majority in the *Molineux* case. For a discussion of the entire question, see *State v. Adams* (1878) 20 Kan. 319.

A. N. H.

EVIDENCE—CONFESSIONS IN CRIMINAL TRIAL—ADMISSIBILITY AGAINST A CO-DEFENDANT.—*PEOPLE V. BUCKMINSTER* (1916) 113 N. E. (ILL.) 713.—Two defendants, accused of arson, were tried jointly and, for the purpose of impeaching one, his involuntary confession was offered. *Held*, that it was error to admit that part of the confession which affected the co-defendant, even though the jury were instructed to disregard the confession as affecting such co-defendant.

In regard to the party who confessed, the trial court agreed with the general rule that the involuntary confession of one accused of crime is inadmissible in evidence. *Ammons v. State* (1902) 80 Miss. 592. But it accepted the confession to impeach the testimony of the person who made it. This is a disputed point, and although before the upper court for

the first time, is not passed upon. In some jurisdictions it is inadmissible. *People v. Yeaton* (1888) 75 Cal. 415; *Shephard v. State* (1894) 88 Wis. 185. The main ground of this holding is that such a confession is unreliable as circumstantial evidence of the untrustworthiness of the witness. *Harrold v. Oklahoma* (1909) 169 Fed. 47. In federal cases the admission of such a confession is considered a violation of the constitutional guaranty for the accused to be compelled to testify against himself. Fifth Amendment, U. S. Const.; *Sorenson v. U. S.* (1906) 143 Fed. 820. In other jurisdictions it is admissible. *Hicks v. State* (1892) 99 Ala. 169; *State v. Broadbent* (1903) 27 Mont. 342. The theory is that a defendant in a criminal case, by exercising the privilege given him by statute of testifying, thereby becomes a general witness in the case, subject to cross-examination and impeachment. *Commonwealth v. Tolliver* (1875) 119 Mass. 312; *Smith v. State* (1902) 137 Ala. 22.

The means by which the court avoids deciding the above question and the ground on which it grants reversal is that in a joint trial only that part of an involuntary confession is admissible which in no way implicates the codefendant, even though the jury were instructed to disregard the confession as affecting such codefendant. It is the general rule, in a joint trial, that the voluntary confession of one defendant is admissible against him, although it implicates the other defendants and tends to prejudice them before the jury. *Ackerson v. People* (1888) 124 Ill. 563; *Fife v. Commonwealth* (1857) 29 Pa. St. 429. The remedy in such case is a motion for a direction by the court to the jury that the confession be evidence only against him who made it. *Commonwealth v. Ingraham* (1856) 7 Gray (Mass.) 46; *State v. Berry* (1887) 24 Mo. App. 466. But an involuntary confession, implicating codefendants, was held inadmissible against codefendants in separate trials. *Jackson v. State* (1906) 97 S. W. (Tex.) 312. The admissibility of an involuntary confession, implicating codefendants, in a joint trial, is a new question, before the court for the first time.

E. J. M.

FEDERAL EMPLOYERS' LIABILITY ACT—RIGHT TO SUE UNDER STATE STATUTE.—NEW ORLEANS, M. & C. R. CO. V. JONES ET AL. (1916) 72 So. (Miss.) 681.—A railroad porter, killed in interstate service, left surviving him neither widow, children, parent, or dependent relative, who alone have a right of action under Federal Employers' Liability Act, Apr. 22, 1908. Decedent's half-brother brought suit under state statute. *Held*, that the Federal Employers' Liability Act superseded all legislation over the same subject by the states, and that no suit could be brought under state law for injury or death of an employee of a common carrier, injured or killed in interstate commerce.

For a discussion approving the above rule, see *Taber v. Missouri Pac. Ry. Co.*, 26 YALE LAW JOURNAL, 72; *Staley v. Ill. Cent. R. R. Co.*, 25 *ibid.* 497.

E. J. M.

HUSBAND AND WIFE—COMMUNITY PROPERTY—VOIDABLE GIFT BY HUSBAND—RATIFICATION.—SPRECKELS V. SPRECKELS (1916) 158 PAC. (CAL.)